

Tuesday, June 30, 2009

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Dr. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Daniel V, Inc., 342609

1997, \$8,151.85 Accuracy Related Penalty, \$10,189.80 Late Filing Penalty

1998, \$168,002.06 Accuracy Related Penalty

For Appellant:

Marty Dakessian, Attorney

David L. Keligian, Attorney

For Franchise Tax Board:

Craig Scott, Tax Counsel

William Gardner, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the accuracy-related penalties imposed by the Franchise Tax Board should be abated.

Whether appellant has shown that it had "reasonable cause" for filing a late tax return for 1997.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.10)

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:30 a.m. and reconvened at 10:32 a.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Klaus W. Wang, 441035

2003, \$132,753.00 Assessment

For Appellant:

Klaus W. Wang, Taxpayer

John O. Kent, Attorney

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that respondent erred by not allowing damages awarded in a settlement agreement to be excluded from his taxable income.

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Tuesday, June 30, 2009

Wayne J. Pollard, 399801  
2004, \$1,190.00 Assessment  
For Appellant:  
For Franchise Tax Board:

Wayne J. Pollard, Taxpayer  
Diane Ewing, Tax Counsel  
William Gardner, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the interest/dividend income earned from Loomis Municipal Income Fund-A is exempt from California income tax.

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

#### LEGAL APPEALS MATTERS, CONSENT

(Motion expunged.)

#### CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Fernando Gutierrez, 449484*; and; *Patricia A. McKasy, 449289*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Dr. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Nasrat Alam, 431434

2005, \$2,093.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Christopher M. Anaya and Mary O. Anaya, 442153

2002, \$6,154.40 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David C. Claunch, 440637

2003, \$1,247.00 Tax, \$311.75 Late Filing Penalty, \$401.50 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

2005, \$860.00 Tax, \$215.00 Late Filing Penalty, \$220.75 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Crane Co. & Subsidiaries, 357027

2000, \$279,741 Claim for Refund

Action: Sustain the modified action with concession by the Franchise Tax Board.

**Note: These minutes are not final until Board approved.**

Tuesday, June 30, 2009

Mary Freidouni, 441031

2004, \$305.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Fernando Gutierrez, 449484

Action: The Board took no action.

Boris Kiena and Olga Kiena, 444073

1995, \$1,043.00 Assessment

1996, \$4,600.04 Assessment

1997, \$968.00 Assessment

1998, \$4,487.36 Assessment

2000, \$263,172.17 Assessment

2001, \$32,718.39 Assessment

Action: Modify the action with concession of Franchise Tax Board for 2001; otherwise, sustain the action of the Franchise Tax Board.

Patricia A. McKasy, 449289

Action: The Board took no action.

Bruce Nicholson, 418271

2003, \$2,213.12 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nancy Y. Ramos, 424051

2005, \$274.20 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Gwendolyn Webber, 406027

2005, \$842.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John Buergel, 388878

2004, \$9,430.00 Assessment

Action: Deny the petition for rehearing.

Rick Burningham, 449292

2005, \$2,078.00 Tax, \$519.50 Late Filing Penalty, \$600.50 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Tuesday, June 30, 2009

Byron Hoffman, 439441

2005, \$5,331.00 Tax, \$1,332.75 Late Filing Penalty, \$1,332.75 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Jintau Two, 445969

2005, \$11,875.00 in Tax, \$2,968.75 Late Filing Penalty, \$2,968.75 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

Action: Modify the action with concession by the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Ruth Vinson, 441009

2005, \$5,044.00 Tax, \$1,261.00 Late Filing Penalty, \$1,274.75 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Judith Walther, 445949

2002, \$1,271.00 Tax, \$317.75 Late Filing Penalty, \$77.00 Proposed Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

The Board deferred consideration of the following matter: *James Cato, Jr.*, 426289.

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Ashraf Adabi, 449726

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

James Cato, Jr., 426289

Action: The Board took no action.

Michael Feeley, 436709

2007, \$312.50

Action: Sustain the action of the Franchise Tax Board.

Tuesday, June 30, 2009

Judith Gergel, 432593

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Freda Mae Hunt, 427520

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Migirdich Konaraki, 426561

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Gholam-Ali Nadjmabadi, 439850

2007, \$500.00

Action: Sustain the action of the Franchise Tax Board.

Nhon Phung, 431255

2007, \$347.00

Action: Sustain the action of the Franchise Tax Board.

C. J. Reeves, 432415

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Bobbie Scott, 435209

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Kevin Session, 436562

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Malone Yarborough, 425556

2007, \$340.00

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES  
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

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Tuesday, June 30, 2009

Harry's Auto Body, Inc., 462298 (AS)

1-1-04 to 12-31-06, \$155,705.08

Action: Approve the redetermination as recommended by staff.

Ramirez Developers, 351537 (BH)

10-1-01 to 9-30-04, \$384,641.85

Action: Approve the redetermination as recommended by staff.

Lifoam Industries, LLC, 436869 (OH)

1-1-04 to 12-31-06, \$52,309.10

Action: Approve the redetermination as recommended by staff.

Priority 1 Public Safety Equipment Installation, Inc., 459801 (BH)

10-1-04 to 9-30-07, \$52,555.22

Action: Approve the redetermination as recommended by staff.

Equilon Enterprises, LLC, 484232 (OH)

4-1-99 to 9-30-04, \$314,750.01

Action: Approve the relief of penalty as recommended by staff.

Omax Corporation, 483130 (OH)

10-1-00 to 6-30-08, \$58,391.12

Action: Approve the relief of penalty as recommended by staff.

Bank of America National Trust and Savings Association, 312202 (OH)

1-1-01 to 12-31-04, \$4,446,304.83

Action: Approve the denial of claim for refund as recommended by staff.

Sun-Land Garden Products, Inc. 405619 (GH)

4-1-04 to 3-31-07, \$89,661.88

Action: Approve the denial of claim for refund as recommended by staff.

Trimark Raygal, Inc., 457639 (EA)

4-1-04 to 3-31-07, \$111,619.00

Action: Approve the denial of claim for refund as recommended by staff.

Frontier Medical, Inc., 381945 (EA)

7-1-02 to 6-30-05, \$128,062.00

Action: Approve the denial of claim for refund as recommended by staff.

Tuesday, June 30, 2009

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *NEC Electronics America, Inc.*, 425396; the Board made the following orders:

Office Club, Inc., 482440 (OH)

7-1-97 to 12-31-00, \$1,826,918.68

Action: Approve the credit and cancellation as recommended by staff.

Maxell Corporation of America, 405668 (OH)

7-1-02 to 12-31-05, \$141,755.18

Action: Approve the credit and cancellation as recommended by staff.

Binding Systems of California, Inc., 470154 (CH)

1-1-05 to 12-31-07, \$90,880.78

Action: Approve the credit and cancellation as recommended by staff.

Dot Hill Systems Corp., 484707 (FH)

1-1-04 to 12-31-06, \$238,100.20

Action: Approve the credit and cancellation as recommended by staff.

Pegasystems, Inc., 485346 (OH)

1-1-08 to 6-30-08, \$91,625.49

Action: Approve the credit and cancellation as recommended by staff.

Office Depot, Inc., 484262 (OH)

7-1-95 to 12-31-00, \$60,246.74

Action: Approve the credit and cancellation as recommended by staff.

Macys.com, Inc., 484586 (OH)

4-1-08 to 6-30-08, \$51,958.73

Action: Approve the credit and cancellation as recommended by staff.

Madison/Graham Color Graphics, Inc., 400794 (AA)

1-1-04 to 3-31-07, \$213,844.12

Action: Approve the refund as recommended by staff.

Bank of America National Trust and Savings Association, 312202 (OH)

1-1-01 to 12-31-04, \$788,083.18

Action: Approve the refund as recommended by staff.

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Tuesday, June 30, 2009

Wind River Systems, Inc., 468310 (CH)

7-1-03 to 6-30-06, \$72,518.76

Action: Approve the refund as recommended by staff.

NEC Electronics America, Inc., 425396 (GH)

7-1-04 to 9-30-07, \$164,251.33

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

R. R. Donnelley &amp; Sons Company, 400428 (OH)

1-1-04 to 6-30-07, \$154,378.33

Action: Approve the refund as recommended by staff.

Tolleson Design, Inc., 483154 (BH)

7-1-06 to 6-30-08, \$56,737.16

Action: Approve the refund as recommended by staff.

South Coast Imports Group, Inc., 459573 (EA)

4-1-07 to 6-30-07, \$114,585.67

Action: Approve the refund as recommended by staff.

Marwan Jaradah, 301667 (KH)

1-1-02 to 6-30-04, \$65,608.20

Action: Approve the refund as recommended by staff.

SCCA, LLC, 443321 (OH)

4-1-07 to 6-30-07, \$2,739,800.22

Action: Approve the refund as recommended by staff.

Owens &amp; Minor Distribution, Inc., 459089 (OH)

4-1-05 to 3-31-08, \$51,957.14

Action: Approve the refund as recommended by staff.

Owens &amp; Minor Distribution, Inc., 468155 (OH)

7-1-05 to 6-30-08, \$56,871.28

Action: Approve the refund as recommended by staff.

Owens &amp; Minor Distribution, Inc., 468157 (OH)

7-1-05 to 6-30-08, \$64,167.45

Action: Approve the refund as recommended by staff.

Owens &amp; Minor Distribution, Inc., 450381 (OH)

4-1-05 to 6-30-08, \$95,119.69

Action: Approve the refund as recommended by staff.



Tuesday, June 30, 2009

W. W. Grainger, Inc., 483126 (OH)

1-1-05 to 3-31-08, \$83,164.04

Action: Approve the refund as recommended by staff.

Tupperware U. S., Inc., 374177 (OH)

4-1-05 to 9-30-05, \$78,321.49

Action: Approve the refund as recommended by staff.

Frank Kofsuske, 422907 (BH)

4-1-04 to 6-30-07, \$80,060.70

Action: Approve the refund as recommended by staff.

Sun Microsystems, Inc., 477373 (OH)

4-1-05 to 6-30-05, \$159,052.10

Action: Approve the refund as recommended by staff.

Wyle Laboratories, Inc., 425729 (OH)

10-1-04 to 6-30-07, \$116,064.16

Action: Approve the refund as recommended by staff.

Pacific Service Credit Union, 474783 (CH)

4-1-08 to 9-30-08, \$147,250.00

Action: Approve the refund as recommended by staff.

Foreman Financial, Inc., 476655 (AC)

4-1-08 to 9-30-08, \$62,376.03

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 475411 (EA)

1-1-06 to 12-31-08, \$227,000.43

Action: Approve the refund as recommended by staff.

Long Beach Acceptance Corporation, 470358 (EA)

7-1-07 to 9-30-08, \$2,975,929.33

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 461144 (OH)

4-1-08 to 9-30-08, \$1,724,261.15

Action: Approve the refund as recommended by staff.

Bay Federal Credit Union, 475961 (GH)

4-1-08 to 9-30-08, \$53,922.94

Action: Approve the refund as recommended by staff.

Tuesday, June 30, 2009

Sierra International Machinery, LLC, 441081 (AR)

4-1-05 to 3-31-08, \$67,998.42

Action: Approve the refund as recommended by staff.

Pacific Capital Bank, N. A., 450743 (GH)

1-1-08 to 3-31-08, \$65,511.85

Action: Approve the refund as recommended by staff.

NK Financing Corporation, 405443 (AS)

1-1-05 to 12-31-07, \$58,742.37

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Castle & Cooke Aviation Services, Inc.*, 482847; the Board made the following orders:

Castle &amp; Cooke Aviation Services, Inc., 482847 (MT)

1-1-09 to 1-31-09, \$185,177.22

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

McLane/Suneast, Inc., 460947 (ET)

8-1-08 to 8-31-08, \$86,816.42

Action: Approve the refund as recommended by staff.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Taiheiyo Cement USA, Inc., 332855

1998, \$74,173.00 Claim for Refund

Considered by the Board: June 9, 2009

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Dr. Chu moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Yee. Mr. Leonard made a substitute motion to reverse the action of the Franchise Tax Board. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Dr. Chu and Ms. Mandel voting no.

Upon motion of Dr. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Dr. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Tuesday, June 30, 2009

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,  
ADJUDICATORY**

Sydell Dublin, 437737

2007, \$1.00 or more

Considered by the Board: February 25, 2009

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision denying the petition for rehearing.

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Dr. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following order:

Action: Approve the Summons to Annual Meeting of the Board and County Assessors. (Exhibit 6.11)

The Board recessed at 12:15 p.m. and reconvened at 1:30 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**LEGAL APPEALS MATTERS, CONSENT**

Upon motion of Ms. Yee, seconded by Mr. Leonard, the Board expunged its earlier motion with respect to the Legal Appeals Matters Consent Agenda.

The Board deferred consideration of the following matter: *Conco Paint Company, 57628, 77681, 151419, 165485, 214933, 89000961230, 89000961240, 89000961250, 89000961260; Donald Edward Wood, 397151; and, Thimir Mahmud, 432156 (UT).*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *RG Funds, LLC, 362017*; the Board made the following orders:

Yohannes Kahsai, 426226 (GH)

1-1-04 to 12-31-06, \$12,741.71 Tax, \$1,274.19 Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Malibu Masonry Supply, Inc., 390471 (AC)

10-1-03 to 9-30-06, \$730,674.21 Tax, \$73,067.40 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Tuesday, June 30, 2009

CSK Auto, Inc., 358612, 379951 (OH)

1-1-01 to 1-4-04, \$0.00 Tax, \$25,644.74 Negligence Penalty, \$19,309.17 Amnesty Double Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Conco Paint Company, 57628, 77681, 151419, 165485, 214933, 89000961230, 89000961240, 89000961250, 89000961260 (MT)

Action: The Board took no action.

Donald Edward Wood, 397151 (AA)

Action: The Board took no action.

Thamir Mahmud, 432156 (UT)

Action: The Board took no action.

Jesus Gomez Marmolejo and Rafael Garcia, 392343 (FH)

1-1-03 to 3-31-06, \$64,415.50 Tax, \$6,603.90 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

RG Funds, LLC, 362017 (AA)

1-1-03 to 12-31-05, \$17,567.22 Tax

Action: Redetermine as recommended by the Appeals Division. Ms. Mandel not participating.

Abdo A. Alharby, 479799 (ET)

November 6, 2008, \$114.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Fawaz Nasser Kassem Alriashi, 484213 (ET)

December 5, 2008, \$152.25 Approximate Value

Action: Determined that staff properly seized the tobacco products.

**SALES AND USE TAX APPEALS HEARINGS**

Swanillon, Inc., 422969, 432778 (FH)

10-1-03 to 9-30-06, \$35,509.00 Claim for Refund

For Petitioner/Claimant: John Gentillon, Taxpayer

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner should be relieved of the interest that has accrued on the audit liability.

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tuesday, June 30, 2009

Khurshid Alam Khan, 241965, 359065, 359066 (AR)

1-1-00 to 12-31-02, \$206,186.12 Tax, \$58,807.43 Fraud Penalty, \$34,980.88 Amnesty Interest Penalty

1-1-03 to 3-31-04, \$78,640.02 Tax, \$19,660.05 Fraud Penalty

3-1-99 to 12-31-99, \$48,367.13 Tax, \$12,091.80 Fraud Penalty, \$12,091.80 Amnesty Double Fraud Penalty, \$12,643.33 Amnesty Interest Penalty

For Petitioner: Edward G. Wong, Attorney

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that amounts recorded in sales journals were not additional taxable sales of cigarettes.

Whether there is clear and convincing evidence of fraud or intent to evade the tax.

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

#### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JUNE 30, 2009**

Daniel V, Inc., 342609

Final Action: Dr. Chu moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Dr. Chu voting yes, Mr. Leonard, Ms. Steel and Ms. Mandel voting no.

Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee and Dr. Chu voting no, the Board reversed the action of the Franchise Tax Board as to the accuracy related penalty.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Ms. Yee, Dr. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board as to the late filing penalty.

Klaus W. Wang, 441035

Final Action: Ms. Steel moved to modify the action of the Franchise Tax Board by granting the appeal in part for pain and suffering for past and future in the amounts of \$450,000 and \$550,000 respectively. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Dr. Chu and Ms. Mandel voting no.

Upon motion of Dr. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Dr. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Wayne J. Pollard, 399801

Final Action: Ms. Steel moved to grant the appeal based on erroneous advice given by the Franchise Tax Board to the appellant. The motion failed for lack of a second.

Tuesday, June 30, 2009

Upon motion of Dr. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

#### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 30, 2009**

Swanillon, Inc., 422969, 432778 (FH)

Final Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Khurshid Alam Khan, 241965, 359065, 359066 (AC)

Final Action: Upon motion of Dr. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 2:10 p.m.

*The remaining minutes are adopted by the Board on October 6, 2009.*

Noted: The following matters were removed from the calendar prior to the meeting: *Vinton P. Cunningham and Beverly P. Cunningham, 447982, 459821; Tom Dworkin Associates, 341727 (AC); A. J. Bates, 3555; and, closed session including personnel matters and Pending litigation: General Motors Corporation, et al., U.S. Bankruptcy Court, S.D. New York, Case No. 09-50026 (Gov. Code 11126(e)).*

Wednesday, July 1, 2009

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Dr. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Ms. Steel introduced her Rolling Hills Estates Office interns: Rachael Lee and Simon Kwak.

### SALES AND USE TAX APPEALS HEARINGS

Renix Corporation, 317697, 318253 (EH)

1-1-01 to 6-30-04, \$17,015.70 Tax, \$2,631.38 Amnesty Interest Penalty

For Petitioner/Claimant:

Patrick Leone, Representative

Marian Shannon, Controller

Cary Huxsoll, Tax Counsel

For Sales and Use Tax Department:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that it properly reported all use tax collected on the broker sales remaining in dispute.

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Universal City Studios, Inc., 373822, 378248 (AC)

7-1-96 to 4-30-02, \$473,682.39 Tax, \$200,000.00 (or as determined) Claim for Refund

For Petitioner/Claimant:

Dawn Mayhew, Taxpayer

William Vande Wetering, Representative

Dean Andal, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Department's computation of taxable sales from catered events is excessive.

Whether miscellaneous other adjustments are warranted.

Whether further adjustments to the audited cost of fixed assets subject to use tax are warranted.

Action: The Board directed staff to confer with the parties and continue the hearing later in the day.

PFT / Alexander Service, Inc., 400767 (AA)

4-1-03 to 3-31-06, \$39,753.63 Tax

For Petitioner:

John Keefner, Taxpayer

Heather McIntosh, Accountant

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner made an exempt sale of hydraulically operated marine fuel loading arms (fuel loading arms) to the U.S. Government.

Wednesday, July 1, 2009

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### **SPECIAL TAXES APPEALS HEARING**

Said T. Saad, 273001 (ET)

1-1-99 to 3-31-03, \$2,693,961.04 Tax, \$269,396 Failure to File Penalty, \$268,963.16 Finality Penalty, \$673,490 Fraud Penalty

For Petitioner:

Said T. Saad, Taxpayer

Mark D. Pastor, Attorney

For Property and Special Taxes Department:

Monica Silva, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether applicant is liable for the determined tax on purchases and distributions of untaxed tobacco products.

Whether there is clear and convincing evidence of fraud.

Whether applicant has established reasonable cause to abate the 10-percent penalty for failure to file returns.

Whether relief from the penalty for failure to timely pay the determination (finality penalty) is warranted.

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### **SALES AND USE TAX APPEALS HEARING**

Universal City Studios, Inc., 373822, 378248 (AC) (Continued)

For Petitioner/Claimant:

Dawn Mayhew, Taxpayer

William Vande Wetering, Representative

Dean Andal, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Action: Ms. Steel moved to grant the petition. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Dr. Chu and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board. The petitioner should provide a revised Exhibit B submitted at this hearing to show the cost per person for food and beverage, including the gratuity at both 15 and 19 percent and any information showing the actual gratuity percentage with respect to the representative contracts. If the information discloses a gratuity percentage other than 15 or 19 percent, the revised workup of Exhibit B should also include that percentage gratuity. The Board also



Wednesday, July 1, 2009

requested the petitioner provide copies of current contracts that show charges to the customer allocated to food and beverages, plus gratuity, and the charges allocated to access to the park.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JULY 1, 2009**

Renix Corporation, 317697, 318253 (EH)

Final Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mr. Leonard requested staff provide the relevant cases that might help petitioner pursue its remedies against the purchaser.

PFT / Alexander Service, Inc., 400767 (AA)

Final Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD JULY 1, 2009**

Said T. Saad, 273001 (ET)

Final Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ms. Yee acknowledged Dr. Chu's work with the Board of Equalization and congratulated her in anticipation of winning the 32<sup>nd</sup> Congressional District race. Mr. Leonard added his congratulations and appreciation.

The Board adjourned at 1:27 p.m.

*The foregoing minutes are adopted by the Board on October 6, 2009.*